IN THE SUPREME COURT FOR THE STATE OF ALASKA

JEFF GARNESS, LISA GARNESS, SHANNON CARTE, DONALD CRAFTS, SUSAN M. KENT-CRAFTS, and CAROLYN "CARE" CLIFT, Appellants, v. LT. GOVERNOR KEVIN MEYER, in his official capacity as Lt. Governor for the State of Alaska, and GAIL FENUMIAI, in her official capacity as Director of the Division of Elections, Appellees. v. ELIZABETH A. HODGES SNYDER, Intervenor.	)	Supreme Court No. S-17971

Superior Court No. 3AN-20-09661 CI

APPEAL FROM THE SUPERIOR COURT
FOR THE STATE OF ALASKA, THIRD JUDICIAL DISTRICT AT ANCHORAGE
JOSIE GARTON, JUDGE

BRIEF OF INTERVENOR ELIZABETH A. HODGES SNYDER

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Filed in the Supreme Court for the State of Alaska this ____ day of January, 2021.

By: _____
Clerk of Court

STATEMENT OF THE CASE

Introduction

Lance Pruitt's opportunistic challenges to the Alaska election process exemplify the importance of strict compliance with election contest statutes and the immediate and direct harms these self-serving challenges pose both to the electoral system and the voters participating in it. Superior Court Judge Josie Garton adeptly recognized these harms and correctly imposed the statutorily-mandated protections imbedded in AS 15.20.540, which required, as a matter of law, dismissal of Count II in the complaint filed by Mr. Pruitt (the "Complaint").

In the event this Court determines that Judge Garton erred in her dismissal of Count II, Mr. Pruitt wholly failed to meet his burden to prove that the State of Alaska Division of Elections ("Division") committed malconduct, fraud or corruption when relocating the House District 27-915 polling location for the 2020 General Election or that this relocation changed the election results. Instead, the findings of fact issued by Judge Garton and the evidence submitted at the December 2020 evidentiary hearing serve only to emphasize the propriety of the Division's temporary relocation of the House District 27-915 polling location.

Statement of Facts and Procedural Background

The general election for House District 27 took place on November 3, 2020, with two candidates on the ballot for the seat: Lance Pruitt and Elizabeth A. Hodges

Snyder.[1] On November 30, 2020, the results of the General Election were certified with the Division declaring Snyder the victorious candidate by 13 votes.[2] On December 4, 2020, the Division held a hand recount in response to a recount application.[3] While Snyder remained the victorious candidate following the recount, her lead decreased to 11 votes.[4]

On December 9, 2020, Mr. Pruitt[5] filed an election contest (the "Complaint") in Alaska Superior Court and an election recount appeal before the Alaska Supreme Court.[6] Dr. Snyder intervened in both the election contest and recount appeal.[7] The second count of the election contest complaint ("Count II") alleged, in pertinent part, as follows:

> (1) AS 15.10.090 provides that the Director shall give full public notice if the location of a polling place is changed.
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> (2) Public notice must include (1) whenever possible, sending written notice of the change to each affected registered voter in the precinct; (2)

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1 Order Regarding Motion to Dismiss and Intervenor Motion to Dismiss, Record on Appeal 000494.

2 Id.

3 Id.

4 Id.

5 The Complaint was originally filed by Mr. Pruitt and six qualified voters. Record 000544. The qualified voters were subsequently dismissed from the proceeding. *See* Order to Dismiss Multiple Parties, R. 000512.

6 Complaint, Record 000544; S-17951.

7 Unopposed Motion to Intervene, R. 000465.

providing notice of the change by publication in a local newspaper of general circulation; (3) providing notification of the change to the appropriate municipal clerks, community councils, tribal groups, Native villages, and village regional corporations; and (4) inclusion in the official election pamphlet.

(3) In 27-915, the location was changed from Muldoon Town Center to Begich Middle School without notice pursuant to State law.

(4) As there was another polling place location for a different district at Muldoon Town Center, there was voter confusion due to the failure to give proper notice.

(5) Given the failure to provide proper notice, voters were disenfranchised and the integrity of the election is at question and thus, plaintiffs are entitled to relief.[8]

Mr. Pruitt also asserted in the Complaint that "there were several errors in the conduct of the election sufficient to change the outcome of the election" and that the changed polling location was the second change in location during 2020 and it occurred "just days before the election."[9] The Complaint contained no allegations that the change in polling place location constituted malconduct, corruption or fraud or that the location change was sufficient to change the outcome of the election.

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[8] Complaint, Count II, R. 000546-000547.

[9] Complaint, R. 000545.

On December 15, 2020, both Dr. Snyder and the Division separately moved to dismiss the Complaint, including Count II, arguing, with respect to Count II, that the allegation lacked grounds for an election contest grounds and failed to state a claim upon which relief can be granted by the court.[10] More specifically, the Division and Dr. Snyder sought dismissal of Count II because the Complaint failed to allege that the violation of AS 15.10.090 was knowing or reckless, or introduced bias into the vote.

On December 17, 2020, Mr. Pruitt filed two pleadings: his Consolidated Opposition to Defendants' and Intervenor's Motions to Dismiss and Plaintiff's Motion for Judicial Notice of Facts Premised Upon Certified Public Records.[11] In the Consolidated Opposition, Mr. Pruitt attempted to supplement the allegations in his Complaint, asserting, in part, that the Division's failure to comply with AS 15.10.090 introduced bias because Republicans outnumbered Democrats in House District 27 on election day.[12] In his Opposition, Mr. Pruitt asserted that "there is no other remedy but for this court to deem the election invalid due to the wrongful suppression of votes and to order a special election."[13]

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[10] Memorandum in Support of Motion to Dismiss, R. 000397; State of Alaska Motion to Dismiss, R. 000414.

[11] Consolidated Opposition, R.000290-000303; Motion for Judicial Notice of Facts Premised Upon Certified Public Records, R. 000304-000316.

[12] Consolidated Opposition to Defendants' and Intervenor's Motion to Dismiss, R. 000299.

[13] Id., at R. 000300.

In his Consolidated Opposition, Mr. Pruitt also set forth additional, but originally unpled factual assertions. Among the newly asserted facts, Mr. Pruitt named two voters with the same name and accused them of being "in fact" the same person. Mr. Pruitt's Opposition then accused this person of corruption and argued "the corrupt registration, and the malconduct on the part of the Division in allowing this voter to vote twice" was sufficient to change the outcome of the election."[14] Mr. Pruitt also announced in the Consolidated Opposition that three voters, which he also named, were ineligible to vote in Alaska and alerted the court to "additional evidence" that was found through records obtained through the Department of Natural Resources showing some voters purchased houses outside District 27 before October 4, 2020.[15] On December 17, 2020, Mr. Pruitt filed a Notice of Withdrawal of Allegation removing the wholly unsubstantiated claim of "double voting" by the previously named voters.[16]

In addition to the facts alleged in his Consolidated Opposition, Mr. Pruitt moved the court to take judicial notice that over 21 voters improperly voted in District 27 based upon various property records that included warranty deeds and property tax records for each of the named voters.[17] Mr. Pruitt reported that "[d]uring review of the election, and as the news of litigation became public, Plaintiffs learned of several voters who

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[14] Consolidated Opposition, R. 000293.

[15] Consolidated Opposition, R. 000294.

[16] Notice of Withdrawal of Allegation, R. 000535-000536.

[17] Plaintiff's Motion for Judicial Notice of Facts Premised Upon Certified Public Records, R. 000305.

were not qualified to vote."[18] Mr. Pruitt alleged that these voters were "not residents of House District 27 pursuant to the Alaska Constitution."[19]

On December 21, 2020, the Division opposed Mr. Pruitt's Motion for Judicial Notice. The Division argued that residency is not a fact subject to judicial notice and submitted evidence to the court demonstrating the inaccuracy of Mr. Pruitt's accusations against the named voters. Most notably, the State reported that 13 of the 21 voters did not have votes counted in the House District 27 election because these voters registered a new address in a different senate and house district after the registration deadline and thus these voters "properly declared their new residence addresses when they applied for an absentee ballot or when they voted, and the Division properly counted their votes in only the races in which they were qualified to vote." The Division argued that "[b]y naming these thirteen voters, Mr. Pruitt has succeeded only in falsely - and publicly - accusing these voters of wrongdoing."[20] The State identified other voters among the 21 who had moved residences, but who had relocated within the HD27 and thus had also properly cast their ballots.[21]

Shortly after the Division filed its opposition, Mr. Pruitt filed Plaintiff's Withdrawal of Certain Voters from Plaintiff's Motion for Judicial Notice of Facts Premised Upon Certified Records. In his withdrawal, Mr. Pruitt removed 15 voters from his motion for

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18 Id.

19 Id.

20 State's Opposition to Motion for Judicial Notice, R. 000144.

21 Id.

judicial notice, but reasserted his allegations against the remaining six voters.[22] That same day, Mr. Pruitt filed a second motion for judicial notice again asserting that Mr. Pruitt had additionally "learned of several voters who were not qualified to vote" after the litigation became public and again naming specific voters and accusing them of improperly voting. The exhibits to Mr. Pruitt's second motion for judicial notice included not only deeds and notices of default but foreclosure documents for named voters.[23] This second motion also included an affidavit from Tina Hardwick, a paralegal employed by Mr. Pruitt's legal team. Ms. Hardwick attested to calling four of the named voters on December 17, 2020 and inquiring about their residency.[24]

On December 22, 2020, Mr. Pruitt filed a reply to the oppositions filed by the State and Dr. Snyder, arguing that judicial notice was warranted, but further acknowledging the withdrawal of 15 of the original 21 named voters, after learning additional information that challenged the very fact for which judicial notice was sought. On December 22, 2020, the judge denied Mr. Pruitt's request for judicial notice finding that "voter residency is not a fact subject to judicial notice."[25]

On December 22, 2020, Judge Garton issued the Order Regarding Motion to Dismiss and Intervenor Motion to Dismiss, finding that the Complaint failed to allege

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[22] Plaintiff's Withdrawal of Certain Voters from Plaintiff's Motion for Judicial Notice R.000683.

[23] *See* Plaintiff's second Motion for Judicial Notice of Facts Premised Upon Certified Public Records, R. 000187-000264.

[24] Affidavit of Tina M. Hardwick, R.000264.

[25] Order Denying Plaintiffs' Motion for Judicial Notice, R. 000681.

facts that would entitle Mr. Pruitt to relief and dismissing all counts, including Count II. In dismissing Count II, Judge Garton determined that Mr. Pruitt failed to allege facts reasonably susceptible to an inference that the purported violation of AS 15.10.090 either: (a) influenced voters to vote a certain way and thereby introduced bias into the vote; or (b) was knowing or reckless.[26]

However, given that this matter is an election contest that must be decided under strict timelines, and with the parties' agreement, the Trial Court stayed the dismissal[27] and heard evidence solely relating to Count II on December 23 and 23, 2020. Judge Garton subsequently issued findings of fact and conclusion of law on December 29, 2020, to preserve this Court's ability to review the merits regarding Count II in the event it finds the dismissal was error.

On December 30, 2020, Mr. Pruitt withdrew his election recount appeal but appealed the Trial Court's dismissal of Count II as well as various findings and conclusion made by the Trial Court regarding the polling place relocation.

STANDARD OF REVIEW

This Court reviews de novo the Trial Court's dismissal of Count II[28] and the Trial Court's legal conclusions[29], adopting the "rule of law that is most persuasive in light of

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[26] Order Regarding Motion to Dismiss and Intervenor Motion to Dismiss, R.000504-000507.

[27] Order Staying Dismissal of Count II, R.000660.

[28] *Alleva v. Municipality of Anchorage*, 467 P.3d 1083, 1088 (Alaska 2020).

[29] *Nageak v. Mallott*, 426 P.3d 930, 940 (Alaska 2018).

precedent, reason, and policy."[30] The Trial Court's factual findings are reviewed for clear error, which only exists when this Court's review of the record leaves it with "the definite and firm conviction that the superior court has made a mistake."[31]

ARGUMENT

Democracy, and the elections that uphold it, are fundamentally imperfect. Humans error, machines malfunction, weather systems set in, fires erupt, and pandemics occur. Despite Mr. Pruitt's assertions to the contrary, the mere existence of an imperfection does not, and cannot, under the most basic tenets of law and policy, constitute grounds for an election contest. Every election contest, by its nature, calls into question the validity of the election it challenges. As a result, while the right to bring an election contest promotes faith in the election process, abuse or misuse of this right swiftly undermines it. Alaska Statute 15.20.540 carefully balances election accountability with stability, ensuring voters and candidates have an opportunity to raise election contests, but limiting contests to specific grounds and expedited time periods. Here, Mr. Pruitt's Count II failed to comply with the limitations imposed by the Alaska Legislature on election contests and thus, Judge Garton properly dismissed Mr. Pruitt's Complaint, including Count II.

In the event, however, that this court finds the Trial Court's dismissal of Count II premature, Mr. Pruitt also failed to present evidence at the hearing that would

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30 *Alleva*, 467 P.3d at 1088; *Nageak*, 426 P.3d at 940.

31 *Nageak*, 426 P.3d at 940 (quoting *Ranes & Shine, LLC v. MacDonald Miller Alaska, Inc.*, 355 P.3d 503, 508 (Alaska 2015)).

warrant a finding of malconduct, corruption or fraud resulting or arising from the Division's relocation of the House District 27 Precinct 915 polling location.

I. THE SUPERIOR COURT PROPERLY DISMISSED COUNT II OF PLAINTIFFS' COMPLAINT FOR FAILURE TO PROPERLY PLEAD MALCONDUCT, FRAUD OR CORRUPTION

Dismissal of Count II of the Complaint should be affirmed because Mr. Pruitt failed to plead, let alone prove, that the Division engaged in malconduct, corruption or fraud or that the change in the polling location was sufficient to change the results of the election.

A. The Superior Court correctly determined that Mr. Pruitt failed to meet the pleading requirements of AS 15.20.540

The Alaska Supreme Court has repeatedly found that dismissals under Rule 12(b)(6) "should be granted only if it appears beyond doubt that the plaintiff can prove no set of facts in support of the claims that would entitle the plaintiff to relief."[32] When a trial court evaluates a motion to dismiss a complaint under Rule 12(b)(6), the court liberally construes the complaint, treating all factual allegations by the plaintiff as true.[33] The court is not obligated, however, to accept the plaintiff's "unwarranted factual inferences" or its "conclusions of law."[34]

Although the court liberally construes a complaint under Rule 12(b)(6), this liberal construction does not negate the strict statutory requirements imposed upon

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32 *Alleva*, 467 P.3d at 1088.

33 *DeRemer v. Turnbull*, 453 P.3d 193, 197 (Alaska 2019).

34 *Haines v. Comfort Keepers, Inc.*. 393 P.3d 422, 429 (Alaska 2017).

election contests by the Alaska Legislature through AS 15.20.240. It is well established that "election contests are purely statutory and dependent upon statutory provisions for their conduct."[35] The failure "of a contestant to observe strict compliance with the statutory requirements is fatal to [his, her or their] right to have an election contested."[36] As recognized by Judge Garton, this requirement for strict compliance arises from "the importance that 'election results have stability and finality.'"[37] Similarly, a party raising an election challenge bears "the dual burden of showing that 'there was both a significant deviation from statutory direction, and that the deviation was of a magnitude sufficient to change the result of the election.'"[38]

Pursuant to AS 15.20.540, Mr. Pruitt may contest the election only upon one or more of the following grounds:

(1) malconduct, fraud, or corruption on the part of an election official sufficient to change the result of the election;

(2) When the person certified as elected or nominated is not qualified as required by law;

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35 *Dale v. Greater Anchorage Area Borough*, 439 P.2d 790, 792 (Alaska 1968).

36 *Dale*, 439 P.2d at 792.

37 *Id; See also Dansereau v. Ulmer*, 903 P.2d 555, 559 (Alaska 1995) ("Because the public has an important interest in the stability and finality of election results…we have held that 'every reasonable presumption will be indulged in favor of the validity of an election.'")

38 *Braun v. Borough*, 193 P.3d 719, 732 (Alaska 2008); *See also Dansereau v. Ulmer*, 903 P.2d at 571.

(3) any corrupt practice as defined by law sufficient to change the results of the election.[39]

As recognized above, it is well established under Alaska law that election contest requirements are strictly construed and election contests are subject to rigid procedural requirements.[40] The Trial Court correctly determined that the Complaint failed to meet the pleading requirements expressly enumerated in the Election Contest Statute and thus required dismissal. Mr. Pruitt never asserted "malconduct, fraud or corruption" on the part of an election official in the Complaint. Similarly, the Complaint failed to identify any corrupt practice and it did not challenge Dr. Snyder's qualifications to hold office. Finally, Mr. Pruitt failed to allege that an election official engaged in malconduct, fraud or corruption or that any person or entity engaged in a corrupt practice that was "sufficient to change the result of the election."

The Trial Court properly acknowledged that in order to plead malconduct as used in AS 15.20.540(1), a contesting party must allege more than a statutory violation: a contestant must allege "a significant deviation from statutorily or constitutionally prescribed norms" that injects bias into the vote or that is accompanied by scienter.[41] Given the interest in the stability and finality of election results,[42] the

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39 AS 15.20.540.

40 *Dale*, 439 P.2d at 792.

41 Order Regarding Motion to Dismiss and Intervenor Motion to Dismiss, R.000504-000507; *Boucher v. Bomhof*, 495 P.2d 77, 80-81 (Alaska 1972); *see also Hammond v. Hickel*, 588 P.2d 256,258 (Alaska 1978).

42 *See Dale*, 439 P.2d at 792.

pleading requirement is not a mere technicality.[43] The Alaska courts have repeatedly made it clear that public policy demands that election results have stability and finality and that the procedural requirements of the Election Contest Statute demand strict compliance by contestants and consistent enforcement by the courts to preserve that stability and finality.[44]

Here, Count II in the Complaint wholly fails to meet the pleading requirements provided in AS 15.20.540 both generally and specifically. Mr. Pruitt at no time in his Complaint alleges that the Division's purported failure to comply with AS 15.10.090 introduced bias into the vote. Similarly, none of the facts alleged in the complaint are reasonably susceptible to an inference that claimed failure introduced such bias. As this Court held in *Nageak v. Mallott*, an act of malconduct introduces bias into a vote if "conduct of election officials influences voters to vote in a certain way," not merely because it affects an area that favors a particular candidate or party.[45] Because the Complaint neither alleges, nor contains factual allegations reasonably susceptible to an inference that, the purported failure to comply with AS 15.10.090 influenced voters to vote in a certain way, the alleged failure to comply must be knowing and recklessly indifferent to the law's requirements to constitute malconduct under AS 15.20.540(1).

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[43] *Miller v. Treadwell*, 245 P.3d 867, 877 (Alaska 2010) (to pursue an election contest, a contestant "must allege and prove the necessary elements of an election contest claim, including the level of misconduct necessary to support the claim and that the votes in question are sufficient to change the result of the election").

[44] *See Braun v. Borough*, 193 P.3d 719 (Alaska 2008); *Dansereau*, 903 P.2d at 559; *Boucher v. Bomhoff*, 495 P.2d 77, 80 (Alaska 1972).

[45] *Nageak*, 426 P.3d at 945 n.60.

The Complaint, however, failed to allege either. Because the Complaint alleged only a failure to comply with AS 15.10.090 but does not alleged that that failure was knowing or reckless, or allege facts that would support a finding of the same, the Complaint is insufficient to entitle Mr. Pruitt to relief under Count II.

B. Mr. Pruitt's Consolidated Opposition and his motions for judicial notice demonstrate the propriety of the Trial Court's dismissal of Claim II in the Complaint and the dangers of accepting improperly pled election contests

The factual allegations in Mr. Pruitt's Consolidated Opposition and his motions for judicial notice also exemplify the deficiencies in the Complaint as filed and the dangers that arise from the "file now, plead later" approach Mr. Pruitt attempts in his contest.[46] In the Consolidated Opposition, Mr. Pruitt sought to bolster deficient claims of malconduct, fraud, and corruption with new allegations and purported "facts." Indeed, Mr. Pruitt asserted that a named voter had, "in fact" registered and voted twice; accusing the named voter of corruption and the Division of Elections of malconduct in failing to prevent such corruption. Upon receipt of information that confirmed that two individuals with the same name (related father and on) had properly registered to vote, the allegations were withdrawn. The harm to these voters, who have now been falsely named and accused in a public document of voter fraud and corruption, however, cannot so easily be undone.[47] Likewise, Mr. Pruitt's allegations against 21 named voters in his initial motion for judicial notice, accusing them of improper voting, and filing with the court their tax records, deeds, and in some

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46 *Caudle v. Mendel*, 994 P.2d 372,374 (Alaska 1999).

47 Reply to Consolidated Opposition, R. 000284.

cases, even foreclosure documents, is now part of the permanent record, regardless of the subsequent withdrawal of the allegations against the majority of those voters.

These errors palpably demonstrate that admission of insufficient election contest complaints incentivizes the submission of unsubstantiated facts to prove such complaints, as was the case here. The risks are magnified in an election contest where there is a short window for opposing counsel to discover errors and the potential harm caused by such errors is born by individual voters and their faith in the election process, not the parties themselves.

II. THE DIVISION OF ELECTIONS DID NOT ENGAGE IN MALCONDUCT IN RELOCATING THE POLLING LOCATION

A. The temporary relocation of the polling place was necessary

Even if this court finds that Count II was properly pled, the Trial Court properly dismissed the claim as Mr. Pruitt failed to provide evidence that the Division's compliance with some, but not all the notifications requirements of AS 15.10.090 constituted "malconduct" under AS 15.20.540(a). Instead, the evidence presented at the hearing and the findings of fact properly adopted by Judge Garton show that the Division responded to the unanticipated polling place relocation in a reasonable manner under the circumstances, quickly and in good faith. Any confusion experienced by voters in House District 27 Precinct 915, would have been resolved if they sought to vote at either of the predecessor sites, and therefore, did not prevent voters from locating the appropriate polling location and casting their ballots on election day.

Alaska Statute 15.20.540(1) provides that a defeated candidate may contest an election on grounds of "malconduct, fraud, or corruption on the part of an election official sufficient to change the result of the election." Alaska Statute 15.20.540 "parallels the 'directory' view that statutes prescribing election procedures are directory and that they therefore establish a desirable rather than mandatory norm."[48]

Therefore, a party seeking to contest an election must "show more than lack of total and exact compliance" with the statutes prescribing election procedures.[49] "Because the public has an important interest in the stability and finality of election results,"[50] this Court has held that "every reasonable presumption will be indulged in favor of the validity of an election."[51] There is a "well established policy favoring the stability of election results in the face of technical errors or irregularities not affecting election results."[52]

"This court has held that the term 'malconduct' as used in AS 15.20.540 means a 'significant deviation from statutorily or constitutionally prescribed norms.'"[53] Thus,

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48 *Nageak v. Mallott*, 426 P.3d at 943-40 (citing *Boucher v. Bomhof*, 495 P.2d 77, 80 (Alaska 1972)).

49 *Nageak*, 426 P.3d at 943-40 (quoting *Boucher*, 495 P.2d at 80).

50 *Dansereau v. Ulmer*, 903 P.2d 555, 559 (Alaska 1995) (citing *Dale*, 439 P.2d at 792).

51 *Dansereau*, 903 P.2d at 559 (citing *Turkington v. City of Kachemak*, 380 P.2d 593, 595 (Alaska 1963)).

52 *Grimm v. Wagoner*, 77 P.3d 423, 432 (Alaska 2003).

53 *Dansereau*, 903 P.2d at 567 (quoting *Hammond*, 588 P.2d at 258 (citing *Boucher*, 495 P.2d 77).

a party contesting an election "has the dual burden of showing a significant deviation from the prescribed form and that such departure was of a significant magnitude to change the result." [54] Where the significant deviation injects a bias into the vote, a court will find malconduct if the bias is shown to be the result of the significant deviation.[55] But significant deviations which impact randomly on voter behavior will constitute malconduct only if the significant deviations are imbued with "scienter, a knowing noncompliance with the law or a reckless indifference to norms established by law."[56] Each alleged deviation must be separately evaluated to determine whether it is "significant" and whether it involves an element of scienter.[57] To constitute a significant deviation, the act or omission must significantly frustrate the purpose of the statute.[58]

Alaska Statute 15.10.090 provides: "[t]he director shall give full public notice if a precinct is established or abolished, if the boundaries of a precinct are designated, abolished, or modified, or if the location of a polling place is changed," proscribing five means by which public notice "must" be made. In adopting this provision, the Alaska Legislature did not intend that the notice requirements be strictly imposed in every

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54 *Nageak*, 426 P.3d at 943-40 (quoting *Boucher*, 495 P.2d at 80).

55 *Boucher*, 495 P.2d at 80-81.

56 *Hammond*, 588 P.2d at 259.

57 *Id.*, at 259.

58 *See, e.g.*, *Dansereau*, 903 P.2d at 567-69.

instance, recognizing that "some polling place changes are emergencies and need to be made closer to the election" without fully complying with the statute.[59]

Here, the Trial Court correctly determined that the Division's failure to strictly comply with AS 15.10.090 did not constitute a "significant deviation" because:

(1) The Division's notice provisions regarding the unanticipated relocation of the Precinct 915 polling location did not significantly frustrate the purpose of the statute;

(2) The timing of the change in the polling location made full compliance with the statute impossible;

(3) The Division did partially meet the statutory notice requirements by posting notice on its website; and

(4) the Division took other reasonable steps to notify Precinct 915 voters by posting signs at previous Precinct 915 polling locations, Wayland Baptist University and Muldoon Town Center and providing accurate information regarding the updated location in the Division interactive voice recording ("IVR").[60]

Ultimately, the Trial Court reasonably found that the Division acted in good faith in attempting to notify affected voters, especially in light of the significant challenges primarily caused by the Covid-19 pandemic that the Division faced in running the General Election. The Division's deviations from the notice requirements of

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[59] Minutes of Alaska House State Affairs Committee, March 15, 2005 (Hearing on HB 94).

[60] Findings of Fact and Conclusions of Law Regarding Count II, R.000533.

AS 15.10.090 were not done knowingly or in reckless disregard of the statute's requirements, and in no way influenced voters to vote in a certain way or otherwise introduced bias into the vote. The Trial Court's factual findings on these issues find substantial support in the record and are warranted under the law. These findings, as a result, fully support the Trial Court's dismissal of Count II.

B. Any malconduct was insufficient to change the results of the election

The Trial Court also properly determined that the Division's alleged failure to meet all AS 15.10.090 notifications requirements was insufficient to change the results of the election, thereby requiring dismissal of Count II in the Complaint.

The party contesting the election bears the "burden to show that the malconduct [alleged] was sufficient to change the result of the election, and 'every reasonable presumption will be indulged in favor of the validity of an election.' "[61] It would be "legal error" for the Superior Court to adopt a method of simply "averaging of the number of voters who chose the Republican ballot in past elections" to "determine whether malconduct was sufficient to change the outcome of the election."[62] Similarly, Mr. Pruitt cannot meet his burden to prove malconduct sufficient to change the

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61 *Nageak*, 426 P.3d at 950 (footnotes omitted) (*citing Boucher*, 495 P.2d at 80; and *quoting Dansereau*, 903 P.2d at 559)*; see also Grimm v. Wagoner*, 77 P.3d 423, 432 (Alaska 2003); *Boucher*, 495 P.2d at 80 n.5.

62 *Nageak*, 426 P.3d at 949.

outcome of the election by solely relying on fundamentally flawed and refuted expert analysis.[63]

CONCLUSION

For all of the reasons stated within this brief and in the decision and findings issued by the Trial Court, Dr. Snyder respectfully requests that this Court affirm the Trial Court's determinations and dismiss this appeal.

Respectfully submitted at Anchorage, Alaska, this 4th day of January, 2021.

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63 *Id.* at 948-51.

CERTIFICATE OF TYPEFACE

Pursuant to Alaska R. App. P. 513.5(c)(2), the typeface and point size used in this Intervenor's Brief is Arial 12.5 point, proportionally spaced.

CERTIFICATE OF SERVICE

On January 4th, 2021, the undersigned caused a true and correct copy of the foregoing BRIEF OF INTERVENOR ELIZABETH A. HODGES SNYDER to be served electronically, on:

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